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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

10 JEANNIE I. FOX-WIRTH,) Case No. SACV 06-00988-MLG
11 Plaintiff,) MEMORANDUM OPINION AND ORDER
12 v.)
13 MICHAEL J. ASTRUE,)
Commissioner of the)
14 Social Security)
Administration,)
15 Defendant.)
16 _____)

17
18 Plaintiff Jeannie I. Fox-Wirth seeks judicial review of the
19 Commissioner's final decision denying her application for Social
20 Security Disability Insurance benefits. For the reasons set forth
21 below, the Commissioner's decision is affirmed.

22
23 **I. Background**

24 Plaintiff was born June 8, 1952. (AR at 322). She has a high
25 school education and relevant work experience as a bakery clerk and
26 grocery checker. (AR at 22, 98, 103, 116, 322).

27 Plaintiff filed an application for Social Security Disability
28 benefits on June 26, 2000, alleging disability since April 8, 1999, due

1 to dizziness, weakness in arms, an inability to stand for long periods
 2 of time, confusion, and extreme pain. (AR at 76, 97). Plaintiff also
 3 attached an addendum stating that she had been diagnosed with
 4 fibromyalgia and cervical neck disease, that she suffered from irritable
 5 bowl syndrome, and noting that x-rays revealed disc degeneration. (AR at
 6 104). Her application was denied initially and on reconsideration. (AR
 7 at 49, 58).

8 Plaintiff's first administrative hearing was held on December 4,
 9 2001, in Orange, California, before Administrative Law Judge ("ALJ")
 10 Barry S. Brown. (AR at 317-35). Plaintiff testified, as did her best
 11 friend, David C. Garlow.¹ (AR at 321-35). Following that hearing, ALJ
 12 Brown sent interrogatories to Dr. Glen A. Almquist, a Medical Expert
 13 ("ME"). (AR at 338). Answers to those interrogatories were then
 14 forwarded to Plaintiff's attorney who requested the opportunity to
 15 cross-examine Dr. Almquist. (Id.). As a result, a supplemental hearing
 16 was held on October 24, 2002, for the sole purpose of questioning the ME
 17 on his findings. (AR at 336-50).

18 On January 24, 2003, the ALJ denied Plaintiff's application for
 19 disability benefits. (AR at 18-29). The ALJ found that the Plaintiff
 20 met the nondisability requirements for a period of disability and
 21 disability insurance benefits set forth in section 216(i) of the Social
 22 Security Act and met the insured status requirement through the date of
 23 that decision. (AR at 22). The ALJ further found that Plaintiff had not
 24 engaged in substantial gainful activity since the alleged onset date of
 25 disability, and that the medical evidence indicated that Plaintiff
 26 suffered from degenerative arthritis of the cervical spine, degenerative

27 ¹ Plaintiff was not represented by counsel at her first
 28 administrative hearing.

1 arthritis of the lumbosacral spine, and chronic pain syndrome. (AR at
 2 22). The ALJ concluded that these impairments were severe within the
 3 meaning of the Regulations, but not severe enough to meet or medically
 4 equal one of the impairments listed in 20 C.F.R., Part 404, Subpart P,
 5 Appendix 1. (AR at 23). The ALJ also found that, while Plaintiff did
 6 not have the residual functional capacity ("RFC")² to return to her past
 7 relevant work, she retained the exertional capacity to perform "light
 8 work." (Id.). Thus, the ALJ concluded that Plaintiff was not disabled
 9 as defined by the Social Security Act.

10 Following the ALJ's decision, Plaintiff filed a request for review
 11 with the Appeals Council, which was denied. (AR at 6-8). Plaintiff then
 12 filed an action for judicial review in this Court. (AR at 419-423).
 13 However, on January 11, 2005, the parties stipulated to remand the
 14 matter for further administrative proceedings, including an order
 15 directing the ALJ to obtain vocational expert testimony as to what jobs
 16 an individual with Plaintiff's RFC could perform. (Id.).

17 The hearing on remand was held before ALJ Brown on December 8,
 18 2005. (AR at 522-41). Vocational Expert ("VE") Alan Boroskin testified,
 19 and Plaintiff, represented by counsel, testified for a second time.
 20

21 ² Specifically, the ALJ found that Plaintiff retained the RFC to:
 22 sit for three hours at a time, and for a total of eight hours during an
 23 eight hour workday with routine breaks; to stand for two hours at a
 24 time, walk for one hour at a time, and to stand and/ or walk for a
 25 combined total of up to six hours in an eight hour workday, with an
 26 option to alternate between positions to alleviate discomfort; the
 27 capacity to lift and carry up to 10 pounds frequently and 20 pounds
 28 occasionally; to perform simple grasping and fine manipulation without
 restriction; to use the hands for pushing and pulling of leg controls up
 to 10-20 pounds; to use the feet for repetitive movements (as in pushing
 and pulling of leg controls) without restriction; with restrictions to
 occasional bending, squatting, climbing and reaching above shoulder
 height; a preclusion from crawling activities; and a mild restriction
 from work around unprotected heights. (AR at 23).

1 (Id.).

2 On April 24, 2006, ALJ Brown issued another unfavorable decision
3 and incorporated by reference his discussion of the medical evidence
4 from his 2003 decision. (AR at 364-70). The ALJ again found that
5 Plaintiff met the insured status requirements of the Social Security Act
6 through her date last insured, and that she had not engaged in
7 substantial gainful activity at any time relevant to this decision. (AR
8 at 366). The ALJ further found that Plaintiff suffered from:
9 "impairments of degenerative arthritis of the cervical lumbosacral
10 spine, chronic pain syndrome, fibromyalgia, and glaucoma which more than
11 minimally restrict her ability to perform basic work related activities"
12 and which were therefore severe within the meaning of the Social
13 Security Act. See 20 CFR § 404.1520(c). However, the ALJ found that
14 Plaintiff did not have an impairment or combination of impairments that
15 met or was otherwise medically equal to one of the listed impairments in
16 20 C.F.R., Part 404, Subpart P, Appendix 1. (AR at 367). Furthermore,
17 the ALJ concluded that Plaintiff maintained the RFC to sit for 3 hours
18 at a time, and for a total of 8 hours during an 8 hour work day with
19 routine breaks; to stand for 2 hours at a time, walk for 1 hour at a
20 time, and to stand and/or walk for a combined total of up to 6 hours in
21 an 8 hour workday, with an option to alternate between positions to
22 alleviate discomfort; the capacity to lift and carry up to 10 pounds
23 frequently and 20 pounds occasionally; to perform simple grasping and
24 fine manipulation without restriction; to use her hands for pushing/
25 pulling of arm controls up to 10-20 pounds; to use her feet for
26 repetitive movements as in pushing/ pulling of leg controls without
27 restriction; with restrictions to occasional bending, squatting,
28 climbing, and reaching above shoulder height; a preclusion from crawling

1 activities; and a mild restriction from work around unprotected heights.
2 (AR at 367).

3 Additionally, the ALJ considered Plaintiff's statements concerning
4 the intensity, duration, and limiting effects of her reported subjective
5 symptoms "not entirely credible." (AR at 367). Specifically, the ALJ
6 found that the objective medical evidence, Plaintiff's positive response
7 to conservative medical care, the extent of her daily activities, and
8 the evidence of symptom magnification, did not support Plaintiff's
9 allegations of disabling pain. (Id.). The ALJ further found that
10 Plaintiff was unable to return to any past relevant work, but that
11 considering Plaintiff's age, education, work experience, and RFC, there
12 were jobs which existed in significant numbers in the national economy
13 that she could perform. Thus, the ALJ again concluded that Plaintiff
14 was not disabled within the meaning of the Social Security Act. See 20
15 C.F.R. §§ 404.1520(g).

16 The Appeals Council denied review on September 18, 2006. (AR at
17 351-53). Plaintiff then commenced this action for judicial review.

18 On June 29, 2007, the parties filed a joint stipulation ("JS") of
19 disputed facts and issues. Plaintiff contends that the ALJ erred in his
20 evaluation of the severity of Plaintiff's impairments and failed to
21 consider the entire time period at issue. (JS at 3). Plaintiff also
22 contends that the ALJ failed to properly assess Plaintiff's subjective
23 symptoms and credibility. (Id.). Plaintiff requests an award of
24 benefits or, in the alternative, remand for a new hearing to further
25 evaluate the Plaintiff's ability to perform work within her residual
26 functional capacity and for an evaluation, by a medical expert, of her
27 medical impairments. (JS at 12). Plaintiff further asks that her
28 credibility be assessed by the ALJ in accordance with the requirements

1 of Social Security Ruling ("SSR") 96-7p. (Id.). Defendant requests that
2 the final decision of the Commissioner be affirmed.

3

4 **II. Standard of Review**

5 Under 42 U.S.C. § 405(g), a district court may review the
6 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
7 decision must be upheld unless "the ALJ's findings are based on legal
8 error or are not supported by substantial evidence in the record as a
9 whole." *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
10 evidence means such evidence as a reasonable person might accept as
11 adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389,
12 401 (1971); *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It
13 is more than a scintilla, but less than a preponderance. *Robbins v. Soc.*
14 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether
15 substantial evidence supports a finding, the reviewing court "must
16 review the administrative record as a whole, weighing both the evidence
17 that supports and the evidence that detracts from the Commissioner's
18 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If
19 the evidence can support either affirming or reversing the ALJ's
20 conclusion," the reviewing court "may not substitute its judgment for
21 that of the ALJ." *Robbins*, 466 F.3d at 882.

22

23 **III. Discussion**

24 **A. The ALJ Properly Assessed the Severity of Plaintiff's Impairments**

25 Plaintiff contends that the ALJ failed to properly assess the
26 severity of her impairments. Specifically, Plaintiff argues that the
27 ALJ failed to consider medical evidence from the entire time period at
28 issue and failed to properly evaluate the opinion of her treating

1 physician, Shelly Heidelbaugh, M.D. (JS at 3-5). For the reasons below,
2 the Court rejects Plaintiff's contention.

3 Plaintiff's insured status, for the purpose of her eligibility for
4 disability insurance benefits, expired on December 31, 2004. (See AR at
5 365). Thus, the Plaintiff had the burden of proving that she became
6 disabled prior to that date. See *Marci v. Chater*, 93 F.3d 540, 543 (9th
7 Cir. 1996); *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995).
8 Since Plaintiff's alleged disability onset date was April 8, 1999, (see
9 AR at 76), the relevant time period for purposes of the ALJ's
10 determination of entitlement to benefits was from April 8, 1999 to
11 December 31, 2004.

12 The ALJ found that Plaintiff suffered from a number of severe
13 impairments during the relevant time period: degenerative arthritis of
14 the cervical and lumbosacral spine, chronic pain syndrome, fibromyalgia,
15 and glaucoma. (AR at 366). Although the ALJ acknowledged that these
16 impairments caused significant limitations, including the inability to
17 perform her past relevant work (AR at 368), the ALJ nonetheless
18 determined that Plaintiff maintained the residual functional capacity
19 during the relevant time to, *inter alia*, sit for a total of eight hours
20 a day with routine breaks and stand and/or walk for a combined total of
21 six hours a day, with an option to alternate between positions to
22 alleviate discomfort. (AR at 367). The ALJ also found that the
23 Plaintiff could only lift 20 pounds occasionally and ten pounds
24 frequently, and was limited to occasional bending, squatting, climbing,
25 and reaching above shoulder height, and was precluded from crawling.
(Id.). The ALJ also found that Plaintiff could perform simple grasping
and fine manipulation without restriction. (Id.).

26 //

1 In making his findings, the ALJ considered medical evidence of
2 Plaintiff's impairments from various sources, generated over a seven
3 year period, from 1998 through 2005.³ (See AR at 23, 367). This evidence
4 included the observations and opinions of Dr. Gonzalo Covarrubias, who
5 treated Plaintiff from April 1998 through December 2001. While under
6 Dr. Covarrubias's care, Plaintiff underwent a series of epidural and
7 steroid injections in 1999, and in 1999 and 2000, she participated in
8 physical therapy for pain associated with cervical and lumbar
9 degenerative disc disease. (AR at 23, 202). Subsequent testing by Dr.
10 Covarrubias confirmed mild radiculopathy. (AR at 287). In December
11 2000, Dr. Covarrubias prescribed "a conservative treatment with
12 medications, an exercise program and limited activity." (AR at 201). In
13 December of the following year, Dr. Covarrubias again prescribed
14 "conservative treatment" with exercises. (AR at 287). Dr. Covarrubias
15 completed a letter to the Social Security Administration on May 29,
16 2002, in which he opined that Plaintiff's physical limitations preclude
17 her from repeated bending, pushing, pulling, and lifting over 20 pounds
18 or prolonged sitting. (Id.).

19 The ALJ also considered a July 2000 internal medicine consultation
20 report and exam by Dr. Ismail Patel. (AR at 24). Dr. Patel acknowledged
21 the likelihood of fibromyalgia and apparent decreased motion in the
22 cervical spine. (See AR at 168-171). Nevertheless, Dr. Patel found no
23 impairment related physical limitations. (AR at 171).

24

25 ³ The earliest medical records cited by the ALJ were dated April
26 13, 1998, which noted that Plaintiff had been diagnosed with cervical
27 and lumbar degenerative disc disease without radiculopathy or neurologic
28 deficit. (See AR at 23, 209). The most recent medical report relied on
by the ALJ was dated June 28, 2005, which confirmed that Plaintiff has
advanced glaucoma in her left eye. (See AR at 514-18). The ALJ found
that Plaintiff suffered from both impairments.

1 In his decision, the ALJ also noted a rheumatologic consultation
2 report prepared by Dr. Alan R. Schenk on August 7, 2000. (AR at 25,
3 193). Although Dr. Schenk was able to account for Plaintiff's back and
4 neck pain, as well as other symptoms suggestive of fibromyalgia, he
5 suggested there was an "element of symptom magnification" present in her
6 pain descriptions. (AR at 196). Dr. Schenk suggested a referral for
7 physical therapy with an emphasis on therapeutic exercise. (Id.).

8 After reviewing Plaintiff's medical records, Medical Expert Glen
9 Almquist, M.D., provided written responses (AR at 275-80) as well as
10 testimony at Plaintiff's 2002 hearing (AR at 338-49) regarding the
11 Plaintiff's medical condition. The ALJ ultimately adopted Dr.
12 Almquist's opinion as to Plaintiff's residual functional capacity. (AR
13 at 368). In doing so, the ALJ noted that Dr. Almquist's findings are
14 even more restrictive than the State Agency medical consultant who
15 assessed the Plaintiff with the capability for a full range of light
16 work without any regard for the need to alternate between positions. (AR
17 at 368). The ALJ also explained that Dr. Almquist's functional
18 assessment generally comports with the opinion of Dr. Covarrubias that
19 Plaintiff was precluded from prolonged sitting and repeated bending,
20 pushing, pulling, and lifting over 20 pounds. (AR at 287, 368).

21 Contrary to Plaintiff's contention, the ALJ properly rejected the
22 opinion of treating physician Shelly Heidelbaugh, M.D. with respect to
23 Plaintiff's residual functional capacity. (See AR at 368). Plaintiff
24 is correct that the opinion of a treating physician is generally given
25 more probative weight than opinions from non-treating sources. See 20
26 C.F.R. § 404.1527 (d)(2). If the opinion of a treating physician is not
27 contradicted by another physician, the ALJ may only reject it for clear
28 and convincing reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.

1 1996). Even if it is contradicted by another physician, the ALJ may not
2 reject the opinion without providing specific and legitimate reasons
3 supported by substantial evidence in the record. *Id.* Nevertheless,
4 "[t]he ALJ need not accept the opinion of any physician, including a
5 treating physician, if that opinion is brief, conclusory, and
6 inadequately supported by clinical findings." *Thomas v. Barnhart*, 278
7 F.3d 947, 957 (9th Cir. 2002).

8 On September 20, 2001, Dr. Heidelbaugh completed a Fibromyalgia
9 Residual Functional Capacity Questionnaire, in which she concluded that
10 Plaintiff is able to sit and stand/ walk less than two hours in an eight
11 hour work day with normal breaks and that she must be able to shift
12 positions at will; that she can lift less than 10 pounds; that she can
13 use her hands, fingers, and arms less than 10 percent during repetitive
14 activities for less than 10% of the day; and that she is likely to be
15 absent from work more than 3 times a month. (AR at 295-97). The ALJ
16 found that the given the objective medical evidence, Plaintiff's
17 generally conservative treatment of medications, physical therapy, and
18 home exercise, "the assessments submitted by Dr. Heidelbaugh showing
19 [Plaintiff] as having a more restrictive functional capacity are given
20 no probative weight." (AR at 368).

21 The ALJ provided specific and legitimate reasons for rejecting Dr.
22 Heidelbaugh's opinion, and those reasons are supported by substantial
23 evidence in the record. As noted by the ALJ, Dr. Heidelbaugh's opinion
24 was contradicted by Plaintiff's other treating physician, Dr.
25 Covarrubias. (AR at 368). Although Dr. Covarrubias found that Plaintiff
26 was restricted from repeated bending, pushing, pulling, sitting, and
27 lifting over 20 pounds (AR at 287), he also observed no gross motor
28 weakness indicative of disabling pain. (AR at 24, 368). As the ALJ also

1 explained, Dr. Covarrubias's functional assessment was generally
 2 consistent with that of Dr. Almquist. (AR at 287, 368). Indeed, after
 3 more than seven years of examinations and treatment by several different
 4 physicians, including state agency medical consultants, no other doctor
 5 assessed Plaintiff's functional capacity as severely as Dr. Heidelbaugh.
 6 See SSR 96-6p (1996) (findings of fact made by state agency medical and
 7 psychological consultants and other program physicians and psychologists
 8 regarding the nature and severity of an individual's impairment(s) must
 9 be treated as expert opinion evidence of non-examining sources); 20 CFR
 10 § 416.927(f) (although not bound by their opinions, the ALJ must
 11 consider the evaluations made by state agency medical consultants
 12 because they are highly qualified experts in their field); *Morgan v.*
 13 *Comm'r*, 169 F.3d 595, 601 (9th Cir. 1999) (ALJ may reject the opinion of
 14 a treating or examining physician, based in part on the testimony of a
 15 non-treating, non-examining medical advisor).

16 The ALJ also properly relied on evidence in the record that
 17 revealed that the Plaintiff was frequently prescribed "conservative
 18 treatment", including Tylenol and Motrin, as well as home exercise. (See
 19 AR at 201, 202, 204, 210, 236, 242, 265, 266, 313, 460, 468). See *Meanel*
 20 *v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (stating that the "ALJ
 21 properly considered [treating physicians]'s failure to prescribe ... any
 22 serious treatment for this supposedly excruciating pain" in rejecting
 23 Plaintiff's complaints of pain); *Johnson v. Shala*, 60 F.3d 1428, 1434
 24 (9th Cir. 1995). Moreover, Plaintiff's treatment records repeatedly
 25 indicated that she was in no apparent distress and was well developed
 26 and well nourished. (AR at 430, 432, 435, 437, 439, 445, 447, 449, 451,
 27 457, 461, 463, 465, 469).

28 Thus, Dr. Heidelbaugh's opinion is not supported by the objective

1 medical evidence in the record and the ALJ offered specific and
2 legitimate reasons for rejecting it. Furthermore, for all of the
3 reasons stated above, the ALJ's assessment of the severity of
4 Plaintiff's impairments is free from legal error and supported by
5 substantial evidence based on the record as a whole. No relief is
6 warranted on this claim.

7

8 **B. The ALJ Properly Assessed the Plaintiff's Testimony**

9 Plaintiff also contends that the ALJ failed to properly assess her
10 testimony regarding her subjective symptoms. For the reasons below, the
11 Court rejects Plaintiff's contention.

12 At her first administrative hearing on December 4, 2001, Plaintiff
13 testified that she suffered from pain in her neck, head, arms, lower
14 back, hips, legs, mouth, jaw, and stomach (AR at 323-24); that she
15 experiences "blurred vision at different times" in both eyes (AR at 324-
16 25); that feels constantly cold (AR at 325); that she is so weak that
17 she "drop[s] everything" (AR at 326, 328); and that she has trouble
18 sleeping (AR at 327). At the second administrative hearing in 2005, she
19 testified that her symptoms had worsened. (AR at 526). Specifically,
20 Plaintiff stated that she "is unable to hold onto things as well as I
21 was" and her "memory and ability to communicate is lessened." (AR at
22 526). She also stated that: "Panic attacks are worse. The pain has
23 worsened. Sleeping is even less. And the neck stiffness is increased
24 intensely." (AR at 527).

25 When deciding whether to accept the subjective symptom testimony of
26 a claimant, the ALJ must perform a two-step analysis. At the first
27 step, the claimant must produce objective medical evidence of one or
28 more impairments, and show that the impairment or combination of

1 impairments could reasonably be expected to produce some degree of
2 symptom. *Smolen v. Chater*, 80 F.3d 1273, 1281-82 (9th Cir. 1996) (citing
3 *Cotton v. Bowen*, 799 F.2d 1403 (9th Cir. 1986)). The claimant is not
4 required to produce objective medical evidence of the symptom itself or
5 the severity of the symptom. *Id.* at 1282 (citing *Bunnell v. Sullivan*,
6 947 F.2d 341 (9th Cir. 1991) (en banc)). At the second step of the
7 analysis, the ALJ must assess the credibility of the claimant's
8 testimony regarding the severity of his symptoms. If there is no
9 affirmative evidence of malingering, the ALJ may reject the claimant's
10 testimony only if the ALJ makes specific findings giving clear and
11 convincing reasons for the rejection, including which testimony is not
12 credible and what facts in the record lead to that conclusion. *Id.* at
13 1284 (citing *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993)).

14 In his decision, the ALJ found that Plaintiff's "medically
15 determinable impairments could reasonably be expected to produce the
16 alleged symptoms, but that [Plaintiff's] statements concerning the
17 intensity, duration and limiting effects of these symptoms are not
18 entirely credible." (AR at 367). The ALJ explained that his assessment
19 of Plaintiff's subjective complaints "did not differ from that
20 previously expressed in the decision on remand" and "[t]hose reasons,
21 which included the nature and extent of the [Plaintiff's] treatment, her
22 positive response to conservative medical care, and the extent of her
23 activities, and evidence of symptom exaggeration, all serve to diminish
24 the [Plaintiff's] overall credibility." (AR at 368).

25 The ALJ's reasons for rejecting Plaintiff's subjective symptom
26 testimony and credibility are well supported by the record. The ALJ
27 found that the objective medical evidence did not support Plaintiff's
28 statements regarding the intensity and frequency of her pain. As

1 already explained, treating physician Dr. Covarrubias consistently
2 prescribed conservative treatment, such as Celebrex and regular
3 exercise. (AR at 201, 202, 204, 209, 305-06); *see Meanel*, 172 F.3d at
4 1114. On October 15, 2002, Dr. Covarrubias found excellent maintenance
5 of the joint spaces, normal hip function, some sensory deficit in the
6 thumb and index but no gross motor weakness. (AR at 305). Moreover, Dr.
7 Covarrubias opined that Plaintiff could perform light work, and in 2000
8 discussed the possibility of returning to work with the Plaintiff. (AR
9 at 202).

10 Furthermore, a treatment note dated July 2002, stated that
11 Plaintiff looked comfortable despite allegations of pain and shortness
12 of breath. (AR at 487). As already discussed, Plaintiff's treatment
13 records repeatedly state that she appeared to be no apparent distress,
14 was well developed, and well nourished. (See AR at 430, 432, 435, 437,
15 439, 445, 447, 449, 451, 455, 457, 461, 463, 463, 465, 469). As
16 recently as 2005, the visualized portions of Plaintiff's knee and ankle
17 joints were well maintained. (AR at 504). The ALJ also noted that,
18 while Plaintiff had been diagnosed with glaucoma, the optic pressure in
19 her eyes was controlled with medication resulting in nearly normal
20 visual acuity. (AR at 515).

21 The ALJ also explained that, while David Garlow testified at the
22 first hearing that Plaintiff was unable to concentrate, a psychiatric
23 examination by Dr. Vintas found Plaintiff's concentration intact and her
24 memory only mildly limited. (AR at 173-76). The ALJ again cited the
25 evidence in the record that Plaintiff's rheumatologist believed that she
26 was exaggerating her symptoms. (AR at 196).

27 Thus, although Plaintiff established that she suffered from
28 medically determinable impairments which were reasonably expected to

1 produce the symptoms alleged, the ALJ provided clear and convincing
2 reasons for rejecting Plaintiff's subjective symptom testimony. No
3 relief is warranted on this claim.

4

5 **V. CONCLUSION**

6 For the reasons stated above, it is **ORDERED** that the decision of
7 the Commissioner be affirmed and this case be dismissed with prejudice.

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9 DATED: August 1, 2007



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11 Marc L. Goldman
12 United States Magistrate Judge
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